

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 7, 2008 Session

**METROPOLITAN NASHVILLE EDUCATION ASSOCIATION, et al.
v. THE METROPOLITAN BOARD OF PUBLIC EDUCATION**

**Appeal from the Chancery Court for Davidson County
No. 04-391-I Claudia Bonnyman, Chancellor**

No. M2008-00405-COA-RM-CV - Filed March 30, 2009

On remand from the Supreme Court for reconsideration in light of *Lawrence County Education Association v. Lawrence County Board of Education*, 244 S.W.3d 302 (Tenn. 2007), we find that an arbitrator has no authority under the Education Professional Negotiations Act, Tenn. Code Ann. § 349-5-601 *et seq.*, to resolve disputes about coaching positions. The trial court's grant of summary judgment to the board of education is affirmed. The case is, however, remanded to the trial court for consideration of the former coach's statutory claims under Tenn. Code Ann. § 49-5-510.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed In Part and Remanded In Part**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Courtney Lynch Wilbert, Richard Lee Colbert, Franklin, Tennessee, for the appellants, Metropolitan Nashville Education Association, et al.

Sue B. Cain, Director of Law, The Department of Law of the Metropolitan Government of Nashville and Davidson County; Lora Barkenbus Fox, Christopher Michael Lackey, Paul Jefferson Campbell, II, for the appellee, The Metropolitan Board of Public Education.

OPINION

This matter is before us after remand by the Supreme Court for reconsideration of our opinion *Metropolitan Nashville Education Association v. Metropolitan Board of Public Education*, M2005-00747-COA-R3-CV, 2006 WL 2619982 (Tenn. Ct. App. September 12, 2006) ("2006 Appellate Decision"). We are directed to reconsider our prior opinion in light of the Supreme Court's decision in *Lawrence County Education Association v. Lawrence County Board of Education*, 244 S.W.3d 302 (Tenn. 2007). The issue revolves around whether the director of schools can remove Mr. Fuller as the boys' basketball and baseball coach at Overton High School.

The Metropolitan Nashville Education Association (“MNEA”) is the recognized professional employees’ organization for educators in the Metropolitan Public School System. James Fuller is a teacher in the Metropolitan Public School System and a member of MNEA. Until April of 2002, Mr. Fuller taught math at Overton High School where he was head coach of the boys basketball and baseball teams. Following temporary assignments in April and May of 2002, Mr. Fuller was transferred to Hillsboro High School to teach math which also resulted in the loss of his coaching position.

I. PROCEDURAL HISTORY

A. Grievance Process

Mr. Fuller filed a grievance in accordance with the collective bargaining agreement (“Agreement”) between the Metropolitan Board of Public Education (“Board”) and MNEA. After proceeding through the grievance process, Mr. Fuller’s grievance was heard by an arbitrator in March of 2003 who decided that the transfer decision was arbitrary and directed that Mr. Fuller be returned to his position at Overton High School. The Board complied with the arbitrator’s decision to the extent that Mr. Fuller was returned to Overton High School as a math teacher, but the Board refused to return Mr. Fuller to his *coaching* position. Upon request by MNEA to clarify the arbitrator’s decision concerning coaching, the arbitrator responded that the arbitration decision granting Mr. Fuller relief included reinstatement to his coaching responsibilities. The Board refused to do so on the basis that the Agreement did not negotiate “away the administration’s authority to determine . . . which teachers will be appointed as coaches.” Consequently, the subsequent proceedings are exclusively about whether Mr. Fuller is entitled to restoration of his high school coaching responsibilities.

B. Trial Court

In February of 2004, Mr. Fuller and MNEA filed suit seeking enforcement of the arbitrator’s decision. In a separate claim, Mr. Fuller also sought relief under Tenn. Code Ann. § 49-5-510 claiming that the transfer from his coaching assignment was “arbitrary and capricious and not necessary to the efficient operation of the school system.”

On cross motions for summary judgment, the trial court awarded summary judgment to the Board in December of 2004 and vacated the part of the arbitration award restoring Mr. Fuller to his coaching position. The trial court’s December summary judgment order did not appear to expressly address Mr. Fuller’s statutory claim under Tenn. Code Ann. § 49-5-510. Mr. Fuller raised this issue to the trial court in a Motion to Alter or Amend, which was denied. Mr. Fuller and the MNEA appealed the summary judgment order.

C. 2006 Appellate Decision

On September 12, 2006, the Western Section of the Court of Appeals issued the 2006 Appellate Decision. First, this Court found that the trial court erred in granting summary judgment to the Board since Mr. Fuller's entire dispute, including the coaching issue, is subject to arbitration.

We hold that, under the collective bargaining agreement, Mr. Fuller's entire dispute with the Board was subject to arbitration. The interpretation and application of the agreement with respect to the supplemental coaching position was within the province of the arbitrator, and his award was final and binding. Accordingly, the trial court erred by awarding summary judgment to the Board.

Metropolitan Nashville, 2006 WL 2619982, at *6.

Given that Mr. Fuller had not coached for years, the fact that the "baseball and basketball programs have evolved over time", and that "the welfare of the children of the school system is the paramount consideration", the 2006 Appellate Decision provided that the case be remanded to the trial court "with instructions to refer the matter to the arbitrator to fashion an appropriate remedy." *Id.* at *7. The 2006 Appellate Decision expressly declined to address Mr. Fuller's argument on appeal that the trial court erred when it granted summary judgment of the claims under Tenn. Code Ann. § 49-5-510. *Id.*

D. Supreme Court Direction

Before the case was remanded to the trial court, the Board appealed to the Supreme Court. The Supreme Court issued a per curiam order on February 25, 2008 which provided as follows:

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be, and is hereby, granted for the purpose of remanding the case to the Court of Appeals for reconsideration in light of this Court's opinion in *Lawrence County Education Association et al. v. the Lawrence County Board of Education et al.*, No. M2004-02224-SC-R11-CV, which opinion was released on December 20, 2007.

E. On Remand To Court Of Appeals

Upon remand from the Supreme Court, this Court granted appellants' request to file supplemental briefs and to present oral arguments on the issues surrounding reconsideration of the 2006 Appellate Decision in light of *Lawrence County*.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 307 (Tenn. 2008); *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005). We review the summary judgment decision as a question of law. *Chattanooga-Hamilton County Hosp. Auth. v. Bradley County*, 249 S.W.3d 361, 364 (Tenn. 2008); *Finister v. Humboldt Gen. Hosp., Inc.*, 970 S.W.2d 435, 437 (Tenn.1998). Accordingly, this court must review the record *de novo* and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co., Inc.*, 142 S.W.3d 288, 291 (Tenn. 2004); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Staples v. CBL & Assoc.*, 15 S.W.3d 83, 88 (Tenn. 2000). The requirements for the grant of summary judgment are that the filings supporting the motion show that there is no genuine issue of material facts and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d at 365; *Blair*, 130 S.W.3d at 764; *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993).

III. ANALYSIS

On remand, the issues before us are twofold. The first issue is whether the finding in the 2006 Appellate Decision that coaching assignments are subject to arbitration under the Education Professional Negotiations Act, ("EPNA"), Tenn. Code Ann. § 49-5-601 *et seq.*, is in error in light of the Supreme Court decision in *Lawrence County*.

The second issue, expressly unaddressed in the 2006 Appellate Decision, is whether the trial court erred in granting the Board summary judgment of the statutory claim Mr. Fuller raised under Tenn. Code Ann. § 49-5-510.

A. Arbitrability Of Coaching Assignment Under EPNA

The issue before the Supreme Court in *Lawrence County Education Association v. Lawrence County Board of Education*, 244 S.W.3d 302 (Tenn. 2007) was not the narrow issue of whether the particular collective bargaining agreement at issue included coaching assignments within its purview. Instead, the issue involved statutory construction to determine whether an arbitrator's authority can extend to coaching assignments under EPNA.

The Court in *Lawrence County* clearly held that coaching positions were not included within the statutorily approved subjects for negotiation. Under Tenn. Code Ann. § 49-5-601(b)(1), the EPNA is to "prescribe" the "rights and obligations" of boards of education and their "professional employees." *Lawrence County*, 244 S.W.3d at 315. The Court noted that Tenn. Code Ann. § 49-5-601(b)(1) allowed "professional employees" to join organizations and to negotiate as an organization. *Id.* at 315. The term "professional employee" the Court noted was defined by Tenn. Code Ann. § 49-5-602(11) to mean "any person employed by an local board of education in a

position which requires a license issued by the department of education.” Id. at 316. (emphasis original).

Coaching and equivalent positions in public . . . schools do not require a license in the same regard as the teaching profession. Our interpretation, therefore, is that any contractual protections emanating from the EPNA are relevant to persons only in their status as professional employees and not in their status in non-licensed positions.

Id. at 316.

The director of schools has the power to name the coaches in our schools. An arbitrator interpreting a locally negotiated agreement may not intercede in that regard. To the extent that an arbitrator’s award interferes with the authority of a director of schools to appoint coaches, the award is unenforceable. *See* Tenn. Code Ann. § 29-5-313(a)(3) (stating that an arbitrator’s decision may be vacated where the arbitrator exceeds powers).

Id. at 318-19. *See Cannon County Board of Education v. Wade*, M2006-02001-COA-R3-CV, 2008 WL 3069466, at *7 (Tenn. Ct. App. July 31, 2008) (no Tenn. R. App. P. 11 application filed) (holding that under *Lawrence County* “regardless of the language of the locally negotiated agreement, coaching and other assignments that do not require a license are not subject to the collective bargaining process because of the wording of specific provisions of the EPNA”).

As a consequence, it is clear, based on the *Lawrence County* opinion, that the arbitrator’s decision regarding Mr. Fuller’s coaching responsibilities exceeded the reach of the arbitrator’s powers and is unenforceable. *Lawrence County* necessitates a different result from that reached in the 2006 Appellate Decision. Consequently, the trial court’s grant of summary judgment to the Board on the claim seeking to enforce the arbitrator’s decision is affirmed.

On appeal, counsel for MNEA and Mr. Fuller attempt to distinguish *Lawrence County* and this case in such ways as to lead to a differing result.¹

¹ According to Mr. Fuller and MNEA, first Mr. Fuller’s situation differs from the coach in *Lawrence County* since the Board did not treat Mr. Fuller’s coaching responsibilities as a distinct from his teaching assignment. Second, Mr. Fuller and MNEA argue that by allowing the coaching issue to go to binding arbitration the Board, in effect, “accepted” the arbitrator’s decision. Third, Mr. Fuller and MNEA attempt to “bootstrap” the coaching assignment into arbitration since the Agreement included matters pertaining to Board policy. Finally, even if coaching assignments are not authorized subjects of collective bargaining agreements, Mr. Fuller and MNEA argue that the arbitrator could include coaching assignments in its order as part of the remedy.

We believe the distinctions raised by the MNEA and Mr. Fuller are distinctions without a difference since *Lawrence County* was decided based upon statutory authority under the EPNA. The trial court's grant of summary judgment to the Board refusing to enforce the arbitrator's decision about the coaching assignment is affirmed.

B. Claim Under Tenn. Code Ann. § 49-5-510

In addition to the claim seeking enforcement of the arbitrator's decision, Mr. Fuller also raised a second cause of action in the complaint alleging that the transfer from his coaching position was arbitrary and capricious, thus in violation of Tenn. Code Ann. § 49-5-510. The *Lawrence County* decision provides the analysis to be employed when a teacher attempts to challenge the loss of a coaching position under Tenn. Code Ann. § 49-5-510.

As stated, a director of schools has the statutory power to transfer teachers within the local system. Tenn. Code Ann. § 49-5-510 (2002). "When so made, it need not necessarily be preceded . . . by formal written notice and a hearing, so long as it is made in good faith, in accordance with the criterion set forth in the statute - efficient operation of the school system." *McKenna v. Sumner County Bd. of Educ.*, 574 S.W.2d 527, 534 (Tenn.1978); *see also State ex rel. Pemberton v. Wilson*, 481 S.W.2d 760, 770 (Tenn.1972). If a transfer is not made in good faith and is the product of arbitrary, capricious, or improper conduct, a tenured teacher is entitled to present a direct legal challenge in the courts. *McKenna*, 574 S.W.2d at 534; *Mitchell v. Garrett*, 510 S.W.2d 894, 898 (Tenn.1974). Judicial review is limited to determining "whether or not a transfer was made in accordance with the statutory requirements . . . and must be conducted in light of the broad discretion which the statutes clearly give." *McKenna*, 574 S.W.2d at 534 (referencing Tenn. Code Ann. § 49-1411 [Tenn. Code Ann. § 49-5-510]).

A shift of a tenured teacher with athletic coaching duties to a full-time teaching position, one type of work to another, has typically been classified as a transfer and not a "dismissal or suspension." *White*, 614 S.W.2d at 334. In *White*, a tenured teacher who had been discharged as head basketball coach filed suit, contending that he had been "demoted." This Court ruled that "[r]elieving a teacher-coach of his coaching duties only . . . is equivalent to a 'transfer within the system,'" as authorized by statute, but denied relief. *Id.*

Similarly, the holding in *Warren v. Polk County Board of Education*, 613 S.W.2d 222 (Tenn.1981) is instructive as to the historical meaning of "transfer." A tenured teacher, although retained in his teaching capacity, was relieved of his duties as athletic director and coach and, in consequence, did not receive the coaching supplements that accompanied those positions. While recognizing Warren's right to directly challenge his transfer under the applicable statute, this Court held as follows:

The position of athletic director and coach is an assignment that falls within the same category as principal and other administrative and supervisory assignments. *Tenure cannot be acquired in that status*, and there is no requirement of formal charges and a hearing prior to relieving a tenured teacher of that assignment.

Id. at 225 (emphasis added). In its concluding paragraph, this Court ruled that Warren “had the burden of proof,” but failed “to establish by a preponderance of the evidence that the action of . . . relieving him of the duties of athletic director and coach was arbitrary, capricious, or improperly motivated.” *Id.* at 226.

Subject to these constraints, Taylor, as coach, was entitled to present a direct challenge under statute questioning the propriety of his transfer from a teacher with coaching responsibilities to a full-time teaching position. The determinative question is whether the transfer could be classified as for the “efficient operation of the school system.” There is a presumption of good faith associated with teacher transfers. *McKenna*, 574 S.W.2d at 530. Taylor, in order to qualify for relief beyond those years not in dispute, has the same burden Warren had - to prove the transfer was arbitrary and capricious. *Id.* at 534.

Lawrence County, 244 S.W.3d at 314 -315.

Any findings by the arbitrator are irrelevant to Mr. Fuller’s statutory claim about the coaching position since the arbitrator was without authority to adjudicate the dispute about Mr. Fuller’s coaching responsibilities. The trial court made no ruling on Mr. Fuller’s statutory claim regarding the director’s decision about Mr. Fuller’s coaching responsibilities under Tenn. Code Ann. § 49-5-510. On appeal, the Board makes several arguments about this statutory claim, but that claim should not be resolved in the first instance on appeal. Instead, it should be considered by the trial court in the first instance. Consequently, Mr. Fuller’s claim under Tenn. Code Ann. § 49-5-510 is remanded to the trial court to make a determination as described in *Lawrence County* discussed above.

IV. CONCLUSION

The trial court’s grant of summary judgment to the Board on the contractual claims raised by Mr. Fuller and MNEA is affirmed. Mr. Fuller’s statutory claim under Tenn. Code Ann. § 49-5-510 is remanded to the trial court for consideration. Costs of this appeal are taxed half to Mr. Fuller and MNEA and half to the Metropolitan Board of Public Education.

PATRICIA J. COTTRELL, P.J., M.S.